

**FACTORIES, SHOPS AND INDUSTRIES
(AMENDMENT) ACT.**

Act No. 18, 1965.

An Act to make further provisions with respect to the trading hours of shops; to establish a Retail Trade Advisory Committee; for these and other purposes to amend the Factories, Shops and Industries Act, 1962-1964; and for purposes connected therewith. [Assented to, 8th December, 1965.]

Elizabeth II,
No. 18, 1965

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Factories, Shops and Industries (Amendment) Act, 1965".

Short title,
citation and
commence-
ment.

(2) The Factories, Shops and Industries Act, 1962, as amended by subsequent Acts and by this Act, may be cited as the Factories, Shops and Industries Act, 1962-1965.

(3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. The Factories, Shops and Industries Act, 1962-1964, is amended—

Amendment
of Act No.
43, 1962.

(a) by inserting in section two next after the matter relating to Division 3 of Part IV the following new matter:—

Sec. 2.
(Division
into Parts
and
Divisions.)

DIVISION 3A.—*Retail Trade Advisory Committee*—ss. 91A, 91B.

(b) by omitting from the definition of "Close" in subsection one of section seventy-four the word "ninety" and by inserting in lieu thereof the word "ninety-two";

Sec. 74.
(Defini-
tions.)

(c)

No. 18, 1965

Sec. 76.

(Registra-
tion of
shops.)

(c) (i) by inserting next after subsection five of section seventy-six the following new subsection :—

(5A) Except as otherwise provided by section 76A of this Act, the provisions of subsections three, four and five of this section shall not apply to an application made both pursuant to subsection one of this section and under subsection three of the said section 76A.

(ii) by omitting from paragraph (a) of subsection six of the same section the word "section" and by inserting in lieu thereof the words "sections 76A and";

New
sec. 76A.

(d) by inserting next after section seventy-six the following new section :—

Small shops.

76A. (1) In this section—

"Business" means business of the sale of goods by retail.

"Registered shop" means shop in respect of which a certificate of registration or of renewal of registration is for the time being operative.

"Small shop" means a shop in respect of which the following description is in all respects applicable :—

(a) There shall be not more than two shopkeepers of the shop and the shopkeeper or shopkeepers shall be the owner or owners of the business of the shop and entitled to the profits thereof.

(b) Every shopkeeper of such a shop shall be a person actively conducting or actively assisting to conduct the business of the shop and on days other than those on which he is absent from the shop by reason of illness, incapacity or other necessary cause or, if the period of his absence has not exceeded two months, for any other

other reason, shall be deemed for **No. 18, 1965**
the purposes of paragraph (c) of
this definition to be engaged in
the shop in the conduct of such
business.

(c) The number of persons engaged
in the shop as employees or
otherwise in the conduct of the
business thereof on any day,
either at the same time or at
different times, shall not exceed
two, including each shopkeeper
so engaged or deemed by para-
graph (b) of this definition to be
so engaged but exclusive of every
person so engaged—

(i) in an emergency during
the absence from the shop
for part of a day of a
person who is so engaged
therein on that day, or

(ii) during the absence of
such a person from the
shop for any one or more
of the following periods,
namely: not more than
one hour in the morning
between seven o'clock
and nine o'clock; not
more than one hour in
the afternoon between
noon and two o'clock;
and not more than one
hour in the afternoon
between five o'clock and
seven o'clock.

(d) No shopkeeper of the shop shall
be—

(i) a person acting as the
employee of or acting
directly or indirectly as
the

Factories, Shops and Industries (Amendment) Act.

No. 18, 1965

the agent of another person in the conduct of the business of the shop, or

(ii) a person engaged as an employee or otherwise in any business other than the business of the shop.

(e) No corporation engaged, or other person engaged as an employee or otherwise, in a business other than the business of the shop shall have any direct or indirect interest in the business of the shop.

(f) The business of the shop shall consist principally in the sale of all or any one or more of the classes of goods enumerated in Clause (1) of Schedule 3A to this Act.

(g) No goods other than those enumerated in Schedule 3A to this Act shall be sold or exposed or offered for sale in the shop.

(2) The Governor may, from time to time by proclamation published in the Gazette, amend Clause (2) of Schedule 3A to this Act by adding any goods thereto, or removing any goods therefrom, or otherwise altering or varying the same.

Schedule 3A to this Act as from time to time so amended shall be deemed to be Schedule 3A to this Act.

(3) (a) The shopkeeper of a shop may subject to this paragraph make application to the Under Secretary in the prescribed form for a certificate of registration of the shop as a small shop. An applicant for such certificate shall furnish the Under Secretary with such particulars in respect of matters

matters referred to in the definition of "Small shop" in subsection one of this section as the Under Secretary may require, or as may be prescribed, and shall verify by statutory declaration such of the particulars so furnished as the Under Secretary, or the regulations, may require to be so verified.

An application under this paragraph may not be made in respect of any shop within two months after the refusal of an application under this subsection in respect of that shop or the termination pursuant to this section of the registration of the shop as a small shop or the refusal of an appeal against such refusal of or termination of registration.

(b) The Under Secretary on an application being made to him in accordance with paragraph (a) of this subsection in respect of any shop, and on consideration of the particulars furnished pursuant to that paragraph and of such other evidence as he may see fit to take into account—

(i) shall, if he is satisfied that the shop is a small shop, register it as a small shop and—

(a) if the shop is not already a registered shop, issue to the applicant a certificate of registration in the prescribed form;

(b) if the shop is already a registered shop, terminate the registration of the shop as belonging to the class of shops in which it has hitherto been registered;

(ii) if he is not so satisfied—

(a) shall refuse the application and give to the applicant notice in writing of the refusal and the grounds thereof;
and

(b)

No. 18, 1965

- (b) if the shop is not already a registered shop and if within twenty-one days after such refusal no appeal has been commenced under subsection seven of this section, or if an appeal having been so commenced be not upheld, shall unless the applicant otherwise requests, proceed to deal with the application in accordance with subsections three, four and five of section seventy-six of this Act and those subsections shall thereupon apply to and in respect of the application.

(4) The shopkeeper of a shop registered as a small shop shall whenever so required by notice in writing by the Under Secretary furnish to the Under Secretary in writing such particulars in respect of matters referred to in the definition of "Small shop" in subsection one of this section as may be specified in the notice.

A failure to furnish particulars required by such a notice to be furnished shall not be an offence against this Act but the provisions of subsection six of this section shall apply in respect thereof: Provided that any shopkeeper who in response to such a notice furnishes to the Under Secretary any particulars which are false or misleading in a material particular shall be guilty of such an offence.

(5) The Under Secretary on the application of the shopkeeper of a shop registered as a small shop, and on the applicant furnishing such particulars as the Under Secretary may require or as may be prescribed in order to enable him to determine the class of shops, other than small shops, to which the shop belongs, shall terminate the registration of the shop as a small shop.

(6)

(6) The Under Secretary may by notice **No. 18, 1965** in writing to the shopkeeper of a shop registered as a small shop terminate the registration of the shop as a small shop on the ground that—

- (a) the shopkeeper of the shop has failed to furnish particulars required to be furnished by a notice under subsection four of this section, or
- (b) by reason of the existence at any time during the previous two months of any fact or circumstance the shop was not at that time a small shop.

The notice shall state the ground of such termination and where the ground is that specified in paragraph (b) of this subsection shall contain particulars of the fact or circumstance referred to in that paragraph.

(7) From every decision of the Under Secretary—

- (a) refusing an application under subsection three of this section, or
- (b) under subsection six of this section,

in respect of any shop, the shopkeeper of the shop may within twenty-one days appeal to the Industrial Commission of New South Wales. The appeal shall be by way of rehearing and shall be made as prescribed by regulations made under the Industrial Arbitration Act, 1940, as amended by subsequent Acts.

The Industrial Commission of New South Wales shall thereupon determine the matter of the appeal and its determination shall be final and shall be given effect to by the Under Secretary.

(8) (a) Where the Under Secretary pursuant to this section terminates the registration as a small shop of any shop he shall register the shop as belonging to such class of shops other than small shops

No. 18, 1965

shops as he may consider appropriate. The provisions of subsection four of section seventy-six of this Act shall apply to and in respect of the determination of the Under Secretary, under this paragraph, as to the class of shops other than small shops to which the shop belongs.

(b) The termination, pursuant to this section, of the registration of a shop as belonging to a particular class of shops and the registration of the shop as belonging to a different class of shops shall not, except for such change of classification, affect the continuity of the registration of the shop. The Under Secretary may on such change of classification either make such alterations to the certificate of registration or of renewal of registration for the time being operative in respect of the shop as he may consider appropriate, or issue a new certificate in its place. The shopkeeper of the shop shall, if so required by notice in writing by the Under Secretary, forthwith return to him for alteration or cancellation, as the case may require, the certificate to be so altered or replaced.

(9) A notice under this section may be served on a shopkeeper personally or by posting it to him at the address of his shop.

Sec. 77.

(Occupation of unregistered shops.)

(e) by inserting in paragraph (c) of subsection one of section seventy-seven after the word "refused," the words "or the time for the commencement of an appeal against its refusal had not expired or such an appeal was pending,";

Sec. 78.

(Definitions and application.)

(f) by inserting in section seventy-eight next after the definition of "Shopkeeper" the following new definition :—

"Small shop" means shop for the time being registered as a small shop pursuant to section 76A of this Act.

Sec. 79.

(Closing and opening times of certain shops on week days.)

(g) (i) by inserting in subsection one of section seventy-nine after the words "butchers' shops" the words ", small shops";

(ii)

- (ii) by inserting at the end of the same subsection **No. 18, 1965** the words “: Provided that no closing time fixed under this subsection shall be a closing time for any small shop”;
- (h) by inserting in paragraph (a) of subsection one of **Sec. 82.** section eighty-two after the word “shop” where firstly occurring the words “, not being a small shop,”; (Closing time of mixed shops.)
- (i) (i) by inserting in subsection one of section eighty-four after the words “scheduled shops” the words “, small shops”; Sec. 84. (Trading hours of shops on Sunday.)
- (ii) by inserting in subsection two of the same section after the word “class” where secondly occurring the words “, not being a small shop,”;
- (iii) by inserting at the end of subsection three of the same section the following words :—
Provided that no closing time fixed by this subsection shall be a closing time for any small shop.
- (j) (i) by inserting in paragraph (a) of section eighty-five after the words “chemists’ shops” the words “, small shops”; Sec. 85. (Matters to be dealt with in awards.)
- (ii) by inserting in paragraph (e) of the same section after the words “scheduled shops,” the words “other than small shops,”;
- (iii) by omitting from the same section the words “The time” and by inserting in lieu thereof the words “Subject to subsection two of this section, the time”;
- (iv) by inserting in paragraph (i) of the same section after the words “scheduled shops,” the words “small shops,”;
- (v) by inserting in the same section after the words “scheduled shops” where thirdly occurring the words “, small shops”;

No. 18, 1965

(vi) by inserting at the end of the same section the following new subsections : —

(2) (a) In this subsection “the Municipality of Queanbeyan” means the area within the boundaries of that Municipality as constituted at the commencement of the Factories, Shops and Industries (Amendment) Act, 1965.

(b) Notwithstanding the provisions of subsection one of this section the Industrial Commission of New South Wales or a Conciliation Commissioner or a conciliation committee in making an award affecting employees in any class of shops (other than scheduled shops, hairdressers' shops, small shops and shops for the sale of motor vehicles, motor spirit, motor oil or motor accessories) within the Municipality of Queanbeyan may on application by or on behalf of the shopkeepers of a majority of the shops of that class in that Municipality fix for the cessation of the ordinary hours of work by employees in that class of shops in that Municipality on one week day, not being the day of the weekly half-holiday, of each week a time which although later than six o'clock in the afternoon is not later than the time fixed by the laws of the Australian Capital Territory for the closing of shops of that class in that Territory on the same week day.

The said Commission or the appropriate conciliation committee shall from time to time, on application, review in the light of changes of the laws of the said Territory relating to the closing times of shops any provisions inserted in an award pursuant to this subsection.

(3) Nothing in this section shall affect the jurisdiction of the Industrial Commission of New South Wales, a Conciliation Commissioner or a conciliation committee to fix by an award a time for the cessation of the ordinary hours

hours of work on week days or times for the working of ordinary hours of work on Sunday by employees in small shops. **No. 18, 1965**

- (k) by inserting at the end of section ninety the following new subsection :— **Sec. 90.**
(Defences.)

(2) No person shall be convicted for an offence against this Act for not closing or for not keeping closed a shop if he proves that at the time of the alleged offence the shop although not registered as a small shop pursuant to section 76A of this Act was a small shop as defined in subsection one of that section and that at that time—

- (a) an application had been made in accordance with subsection three of that section for such registration and the application had not been refused, or had been refused by the Under Secretary within the previous twenty-one days, or an appeal against its refusal was pending; or
- (b) the person then the occupier of the shop had been the occupier for less than fourteen days and had not applied for a certificate of registration of the shop.

- (l) by inserting next after Division 3 of Part IV the following new Division :— **New Division 3A of Part IV.**

DIVISION 3A—Retail Trade Advisory Committee.

91A. (1) In this Division of this Part of this Act— **Constitution of Committee.**

“Shop” and “shopkeeper” have the meanings respectively ascribed thereto by section seventy-five of this Act.

“The Committee” means the Retail Trade Advisory Committee constituted pursuant to this section.

(2) (a) There shall be constituted a Retail Trade Advisory Committee which shall, subject to paragraph (c) of subsection three of this section, consist of not more than twelve members appointed by the Governor.

(b)

No. 18, 1965

(b) Of the members so appointed by the Governor—

- (i) one shall be the person for the time being holding the office of Under Secretary of the Department of Labour and Industry, or some other officer of that Department;
- (ii) one or more shall be appointed as representative of shopkeepers;
- (iii) one or more shall be appointed as representative of persons employed in shops; and
- (iv) the remaining member or members shall be appointed as representative of purchasers of goods from shops.

(c) The member appointed pursuant to subparagraph (i) of paragraph (b) of this subsection shall be the Chairman of the Committee.

(3) (a) If the member referred to in subparagraph (i) of paragraph (b) of subsection two of this section is unable to attend any meeting of the Committee the Under Secretary may appoint an officer of his Department to attend and act for such member at the meeting and for all purposes the officer so appointed, when so acting, shall be deemed to be the Chairman of the Committee.

(b) In the case of the illness or absence of a member other than the Chairman, the Governor may appoint a deputy to act in the place of such member during his illness or absence.

Any deputy appointed under this paragraph whilst acting as such deputy shall be deemed to be a member of the Committee.

(c) The Minister may, where he is informed by the Chairman that a matter affecting a particular class of shops is to be dealt with at a meeting or meetings of the Committee, appoint a person to attend the meeting or meetings as representative of the shopkeepers of that class of shops. Every person so appointed shall while so attending be deemed for the purposes of this section to be a member of the Committee.

(4)

(4) Subject to this section, the members **No. 18, 1965** of the Committee other than the Chairman shall hold office for a term of five years and shall be eligible for re-appointment from time to time upon the expiration of their term of office.

(5) Members of the Committee shall be entitled to receive such remuneration or fees for their services as may be fixed from time to time by the Governor.

Each member shall be entitled to receive travelling expenses at such rate as the Governor may from time to time determine.

(6) The provisions of the Public Service Act, 1902, or of any Act amending that Act, shall not apply to or in respect of the appointment of any member of the Committee and a member of the Committee shall not, in his capacity as such member, be subject to the provisions of any such Act during his term of office.

(7) (a) A member of the Committee, other than the Chairman, shall be deemed to have vacated his office if he—

- (i) dies;
- (ii) becomes bankrupt, compounds with his creditors or makes any assignment of his estate for their benefit;
- (iii) is a mentally ill person, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, as amended by subsequent Acts;
- (iv) resigns his office by writing under his hand addressed to the Governor; or
- (v) is removed from office by the Governor.

(b) The Chairman of the Committee shall be deemed to have vacated his office as a member of the Committee if he ceases to be an officer of the Department of Labour and Industry.

No. 18, 1965

(8) On the occurrence of a vacancy in the office of a member of the Committee, a person appointed to fill the vacant office shall, subject to this Act, hold office for the remainder of the unexpired term of the vacant office.

(9) For the purposes of exercising and discharging the powers, authorities, duties and functions conferred and imposed on the Committee by or under this Division of this Part of this Act, the Committee may, with the approval of the Public Service Board, on such terms as may be arranged, make use of the services of any of the officers or employees of any Government Department.

(10) For the purposes of any meeting of the Committee a quorum shall consist of the Chairman together with the lowest number of members other than the Chairman which is not less than half the number for the time being of such other members. Any duly convened meeting at which a quorum is present shall be capable of exercising and performing any of the powers, authorities, duties and functions conferred and imposed on the Committee by or under this Division of this Part of this Act.

(11) At any meeting of the Committee the decision of the majority of the members present and voting at such meeting shall be the decision of the Committee.

If at any meeting of the Committee the voting on any matter is equal, the Chairman shall have a second or casting vote.

(12) No act or proceeding of the Committee shall be invalidated or prejudiced by reason only of the fact that at the time when such act or proceeding was done, taken or commenced, there was a vacancy in the office of any member.

(13)

(13) The Committee shall cause minutes of its proceedings and decisions at formal meetings to be kept. No. 18, 1965

(14) The procedure for the calling of meetings of the Committee and for the conduct of business at such meetings shall, subject to this section and any regulations made under this Act in regard thereto, be as determined by the Committee.

(15) The office of a member of the Committee shall not for the purposes of the Constitution Act, 1902, or any Act amending or replacing that Act, be deemed to be an office of profit under the Crown.

91B. (1) The Committee shall have power to investigate and make recommendations to the Minister in relation to— Functions
of
Committee.

- (a) the making, amendment and repeal of regulations under section one hundred and two and proclamations under subsection two of section 76A of this Act;
- (b) the amendment of this Act in relation to any of the matters regulated or dealt with by this Part, Divisions 5 and 6 excepted, of this Act;
- (c) other matters relating to the sale or exposing or offering for sale of goods by retail in shops.

(2) The Committee shall whenever so required by the Minister investigate and furnish to the Minister a report and recommendation with respect to any matter referred to in subsection one of this section.

- (m) by inserting at the end of section ninety-four the words “, but does not include small shops as defined by section 76A of this Act”;
- (n) Sec. 94.
(Trading
hours for
automatic
vending
devices.)

Factories, Shops and Industries (Amendment) Act.

No. 18, 1965
 Sec. 145.
 (Proceedings.)

(n) by inserting next after subsection four of section one hundred and forty-five the following new subsection : —

(4A) The amount of any penalty recovered from a shopkeeper under Part IV of this Act shall be paid into the Treasury and carried to the Consolidated Revenue Fund.

New
 Schedule
 3A.
 Sec. 76A.

(o) by inserting next after Schedule three the following new Schedule : —

SCHEDULE 3A.**Clause (1).**

Groceries.

Cooked meats.

Sausages.

Poultry.

Rabbits.

Eggs.

Bacon.

Preserved fish.

Frozen foods, except pre-packed uncooked meat in packages of more than 1 lb.

Clause (2).

Bread.

Cakes.

Pastry.

Aerated waters, milk, cream and soft drinks.

Sandwiches.

Confectionery.

Nuts.

Pet foods.

Potatoes.

Onions.

Newspapers, periodicals, magazines, stationery and school requisites.

Paper, foil and wrapping requisites.

Souvenirs.

Fishing tackle and bait.

Clause

Clause (2)—*continued.*

No. 18, 1965

Household cleaning and laundry items excluding mechanical and electrical appliances.

Can and bottle openers.

Electric light globes, torches, dry-cell batteries and bulbs.

Photographic films.

Sewing requisites other than material.

Boot and shoe laces, polishes, creams and cleaners.

Tobacco, cigars, cigarettes, pipes, matches and other smoking requisites and accessories.

First aid requisites.

Toilet requisites.

Patent medicines.

Kerosene, methylated spirits, turpentine, and lighter fluid.

Women's stockings.
